

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES THOR KIRK,

Petitioner,

v.

No. CV 15-0614 MV/KBM

GREGG MARCANTEL,

Respondent.

ORDER TO CURE DEFICIENCIES

This matter is before the Court, *sua sponte* under rule 4 of the Rules Governing Section 2254 Proceedings, on Petitioner's State Habeas Corpus Transfer of Venue to United States District Court for Jury Trial ("petition"). Petitioner submitted the petition under the caption of his previous proceeding under 28 U.S.C. § 2254, *Kirk v. Marcantel*, No. CV 14-0976 JH/CEG, which had been dismissed without prejudice on June 3, 2015. Petitioner asserts that he brings his petition "in accordance with order to Exhaustion of Remedies" in the previous proceeding. The Court construes the document as a new § 2254 petition; the Clerk properly entered the petition on the docket as initiating a new proceeding.

The Court determines that Petitioner's filing is deficient. First, he has not paid the \$5.00 habeas corpus filing fee or filed an Application to Proceed in District Court Without Prepaying Fees or Costs. And second, his petition is legally inadequate as a habeas corpus pleading. Attached to his petition are copies of a state court habeas corpus petition and civil complaint for damages. The rules governing section 2254 proceedings require that a petition specify all grounds, state the facts supporting each ground, and be signed by petitioner. Petitioner's photocopied state court pleadings do not satisfy these requirements. Petitioner must include the civil action number (CV 15-0614 MV/KBM) of this case on all papers that he files in this

proceeding. Failure to timely cure the designated deficiencies may result in dismissal of this proceeding without further notice.

IT IS THEREFORE ORDERED that, within twenty-one (21) days from entry of this Order, Petitioner shall cure the deficiencies designated above; and the Clerk is directed to mail to Petitioner, together with a copy of this Order, a § 2254 petition and an Application to Proceed in District Court Without Prepaying Fees or Costs.



UNITED STATES CHIEF MAGISTRATE JUDGE